

CHAPTER NO. 1102

SENATE BILL NO. 3288

By Gilbert

Substituted for: House Bill No. 3297

By Williams, Buck

AN ACT To amend Tennessee Code Annotated, Section 8-44-102 and Section 10-7-503, relative to making public the meetings and records of certain organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-44-102(b)(1), is amended by adding the following new subdivision:

(E) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(i) was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(ii) receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(iii) was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee Consolidated Retirement System.

SECTION 2. Tennessee Code Annotated, Section 10-7-503, is amended by adding the following new subsection:

(d) All records of any association or nonprofit corporation described in Tennessee Code Annotated, Section 8-44-102(b)(1)(E) shall be open for inspection as provided in subsection (a); provided, however, any such organization shall not be subject to the requirements of this subsection so long as it complies with the following requirements:

(1) The board of directors of the organization shall cause an annual audit to be made of the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the money of the organization, made by a disinterested person skilled in such work. Each audit shall cover the period extending back to the date of the last preceding audit and it shall be paid out of the funds of the organization.

(2) Each audit shall be conducted in accordance with the standards established by the Comptroller of the Treasury pursuant to Section 4-3-304(9) for local governments.

(3) The Comptroller of the Treasury, through the Department of Audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards and determining whether the audits meet minimum audit standards which shall be prescribed by the Comptroller of the Treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the Comptroller of the Treasury.

(4) The audits may be prepared by a certified public accountant, a public accountant or by the Department of Audit. If the governing body of the municipality fails or refuses to have the audit prepared, the Comptroller of the Treasury may appoint a certified public accountant or public accountant or direct the Department of Audit to prepare the audit. The cost of such audit shall be paid by the organization.

(5) Each such audit shall be completed as soon as practicable after the end of the fiscal year of the organization. One (1) copy of each audit shall be furnished to the organization and one (1) copy shall be filed with the Comptroller of the Treasury. The comptroller's copy shall be available for public inspection. Copies of each audit shall also be made available to the press.

(6) In addition to any other information required by the Comptroller of the Treasury, each audit shall also contain:

(A) A listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization's directors and officers.

(B) A listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars (\$25,000) in remuneration for such year.

(C) A listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year.

(D) A listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars (\$2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid or payable thereunder.

The provisions of this subsection shall not apply to any association or nonprofit corporation described in Tennessee Code Annotated, §8-44-102(b)(1)(E), that employs no more than two (2) full-time staff members.

SECTION 3.

(a) The provisions of Section 1 of this act shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this act applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information provided that a notice of the executive session is included in the agenda for such meeting.

(b) As used in this section:

(1) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

(2) "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments.


SECTION 4. The provisions of Section 2 of this act shall not apply to any association, organization or corporation that was exempt from federal income taxation under the provisions of § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) as of January 1, 1998, and which makes available to the public its federal return of organization exempt from income tax (Form 990) in accordance with the Internal Revenue Code and related regulations.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

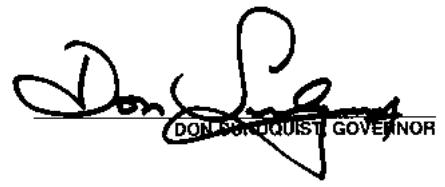
SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 1, 1998


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 1998


DON SUNDQUIST, GOVERNOR